

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-10746-RWZ

LAURIE GILBERT

v.

JOHN HEGGARTY and TIMOTHY DUBE,

PRETRIAL ORDER

August 28, 2006

ZOBEL, D.J.

This matter having come before the Court at a pretrial conference held pursuant to Rule 16, Fed. R. Civ. P., 28 U.S.C., and Richard N. Foley having appeared as counsel for plaintiff; and Kathleen A. Pennini having appeared as counsel for defendants, the following action was taken:

1. TRIAL

Trial is scheduled to commence on September 5, 2006, at 9 a.m. and is estimated to last two to three days.

2. JURY

The parties agreed to impanel eight jurors. Each side shall have four peremptory challenges. Counsel shall file proposed questions to the jury on voir dire no later than August 30, 2006.

3. ISSUES

The parties agree that the only issues to be tried are:

- a) Whether defendants violated plaintiff's federal constitutional rights
 - i) by arresting her without probable cause;
 - ii) by using excessive force ancillary to the booking process; and
 - iii) by improperly prosecuting her. This claim raises a question whether the allowance of a motion to suppress and the resultant nol pros constitutes a finding for plaintiff.
- b) The amount of damages plaintiff claims for pain and suffering and medical expenses.

4. WITNESSES

The plaintiff shall file a list of witnesses who will actually testify by August 30, 2006. Defendant will call the following witnesses:

- a) Timothy Dube
Lawrence Police Department
90 Lowell Street
Lawrence, MA 01840
978-794-5800
- b) John Heggarty
90 Lowell Street
Lawrence, MA 01840
978-794-5800
- c) Carlos Cuerva
Lawrence Police Department
90 Lowell Street
Lawrence, MA 01840
978-794-5800

- d) Daniel Fitzpatrick
Lawrence Police Department
90 Lowell Street
Lawrence, MA 01840
978-794-5800
- e) Michael Montecarvo
Lawrence Police Department
90 Lowell Street
Lawrence, MA 01840
978-794-5800
- f) Brenda Bartlett
Lawrence Police Department
90 Lowell Street
Lawrence, MA 01840
978-794-5800
- g) Alan Andrews
Lawrence Police Department
90 Lowell Street
Lawrence, MA 01840
978-794-5800
- h) Laurie Gilbert

In addition, plaintiff reserves the right to call an expert on fibromyalgia.

5. EXHIBITS

The following exhibits may be admitted into evidence without objection:

- a) Booking Report, dated March 12, 2002, for Laurie Gilbert;
- b) Lawrence Police Department Evidence Log from the March 18, 2002, arrest of Laurie Gilbert;
- c) Application for a criminal complaint against Laurie Gilbert, dated March 18, 2002;
- d) Booking Report, dated March 18, 2002, concerning the booking of Laurie Gilbert;

- e) Incident Report, dated March 18, 2002;
- f) Medical Report of Jason McLeod from Merrimack Valley Hospital, dated March 17, 2002;
- g) Various medical reports of Laurie Gilbert;
- h) Gilbert's Affidavit in Support of the Motion to Suppress Evidence in Commonwealth of Massachusetts v. Laurie Gilbert, Lawrence District Court, Docket No. 0218 CR 2002;
- i) Motion to Suppress Evidence in Commonwealth of Massachusetts v. Laurie Gilbert, Lawrence District Court, Docket No. 0218 CR 2002;
- j) Transcript of October 1, 2002, Motion to Suppress Hearing in Commonwealth of Massachusetts v. Laurie Gilbert, Docket No. 0218 CR 2002.

Prior to the commencement of trial on September 5, 2006, counsel shall confer with each other concerning any exhibits each intends to offer and note any objections each may have to the exhibits of the other. All exhibits to which opposing counsel do not object shall be deemed to be admitted into evidence. Counsel shall mark these exhibits, prepare a listing thereof, and file four copies. Objected-to exhibits shall be marked for identification and listed separately.

6. REQUESTS AND QUESTIONS

On the first day of trial, September 5, 2006, counsel shall file:

- a. Requests for instructions; and
- b. Proposed questions to the jury on special verdict.

August 28, 2006

DATE

/s/Rya W. Zobel

RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE